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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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MAY - 8 2002

In the Matter of)	EB Docket No. 02-21	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY
)		
Peninsula Communications, Inc.)		
	)	File No. EB 01-IH-0609	
Licensee of stations	)	FRN: 0001-5712-15	
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152	
KXBA(FM), Nikiski, Alaska;	)	86717	
KWVV-FM, Homer, Alaska; and	)	52145	
KPEN-FM, Soldotna, Alaska.	)	52149	
)		
Licensee of FM translator stations)		
K292ED, Kachemak City, Alaska;	)	52150	
K285DU, Homer, Alaska;	)	52157	
K285EG and K272DG, Seward, Alaska	)	52158 and 52160	
)		
Licensee of FM translator stations)		
K285EF, Kenai, Alaska;	)	52161	
K283AB, Kenai/Soldotna, Alaska;	)	52155	
K257DB, Anchor Point, Alaska;	)	52162	
K265CK, Kachemak City, Alaska;	)	52154	
K272CN, Homer, Alaska; and	)	52148	
K274AB and K285AA, Kodiak, Alaska	)	52151 and 52164	

To: Administrative Law Judge Richard L. Sippel

REPLY BY PENINSULA COMMUNICATIONS, INC..

Peninsula Communications, Inc. (hereafter "PCI"), by its undersigned counsel,
hereby respectfully submits this Reply to the "Enforcement Bureau's Opposition To
Motion To Enlarge Issues By Peninsula Communications, Inc." (hereafter the
"Opposition") filed on or about April 26, 2002 by the Enforcement Bureau (hereafter the
"Bureau").

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I. PROCEDURAL OPPOSITION UNDER 47 C.F.R 1.229

1. The Bureau seems to argue that the PCI Motion should be denied procedurally since it "...does not include an affidavit from anyone who claims to have personal knowledge of the facts related to the Commission's authority to order PCI to cease operation of the FM translators." PCI would note in this regard that Section 1.229(d) of the Commission's Rules and Regulations requires an affidavit to support specific allegations of fact "...except for those of which official notice may be taken..."

2. PCI's Motion relies entirely on facts and actions, or the lack thereof, of the Federal Communications Commission. All of these are in the record of the proceeding involving the above-referenced FM translators and are matters of which official notice may be taken. Accordingly, PCI's Motion complies with the procedural requirements of Section 1.229.

II. SUBSTANTIVE ARGUMENT-LACK OF AUTHORITY IN THE PRESIDING JUDGE TO ENLARGE THE ISSUES.

3. The Bureau argues that the Presiding Judge lacks the authority to add the requested issue. Specifically, the Bureau believes that the issue raised in the PCI Motion is a "...question beyond the scope of the presiding judge's authority..." and the Presiding Judge should, presumably, reject the addition of the requested issue on that basis.

4. As noted by PCI, the designated issue presently before the Presiding Judge seeks to determine the facts and circumstances surrounding PCI's continued operation of its FM translators in Alaska following the Commission's ordering that such operation be terminated. Any inquiry into the facts and circumstances surrounding PCI's continued operation of the FM Translators after the release of the Commission's termination order must include and address the underlying facts and issues on whether the Commission's

order for PCI to cease its operation of the FM translators was legally sanctioned, and enforceable, under the Communications Act. In designating this proceeding for hearing, the Commission fully invested the Presiding Judge with the authority to inquire into all factual and legal issues relevant and probative to the main inquiry. PCI submits that the Presiding Judge, therefore, has the full authority to enlarge the issues in this proceeding to expand the factual and legal area of inquiry beyond the narrow scope of the initially designated hearing issue. The factual and legal issue requested by PCI may ultimately be resolved in favor of the Commission, or in favor of PCI, but the Presiding Judge should allow the record to reflect a full and unbiased inquiry into whether PCI's belief that the Commission lacks the statutory authority to order it to terminate the operation of its translators was reasonable and founded upon solid factual and legal grounds.

5. The Bureau also argues that the Presiding Judge should not add the requested issue because "...it is precisely what PCI wants the Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") to resolve." The Bureau is correct that the requested issue is before the D.C. Circuit. PCI raised the question whether the Presiding Judge should move forward with this proceeding in light of the D.C. Circuit appeal at the pre-hearing conference. The Bureau's position was that the D.C. Circuit proceeding was no bar to the continuation of the subject hearing since it was a separate proceeding. Having taken that position in this proceeding, PCI submits it is disingenuous of the Bureau to suddenly suggest that the D.C. Circuit proceeding should be a consideration in connection with the question of whether an issue should be added herein. If the D.C. Circuit proceeding is no bar to the subject hearing moving forward, it is certainly no factor in the consideration of what issues should be considered by the Presiding Judge.

6. Finally, the Bureau argues that the Motion by PCI is nothing more than a “thinly disguised attempt” to have the Presiding Judge reconsider prior actions by the Commission in connection with the licensing of the Alaska FM translators. Nothing is further from the truth. PCI has not sought reconsideration of the hearing designation order. PCI assumes, however, that this proceeding now begins with a “clean slate” before the Presiding Judge and that PCI will be given the opportunity to defend its actions in operating the Alaska FM translators through a full and thorough hearing record based on the evidence to be presented herein, and not prejudiced by any prior actions of the Commission. Therefore, PCI is merely attempting to open the area of inquiry so that it may pursue such a thorough hearing record, and its effort to do so should not be denied due to the previous actions of the Commission.

7. PCI has shown in its Motion that there are substantial and material questions of fact whether the Commission has previously acted in a manner that complies with its rules, regulations, policies and the requirements of the Communications Act of 1934, as amended. PCI respectfully requests that the Presiding Judge enlarge the issues in this proceeding as noted in the Motion to allow a full evidentiary record in this regard. Surely, the Presiding Judge has the authority to take this action and allow PCI the full administrative due process to which it is entitled in this hearing proceeding.

Respectfully submitted,

Peninsula Communications, Inc.

By: 

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Its Attorney

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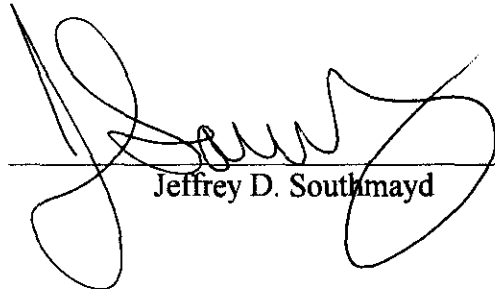
Date: May 8, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent by first class United States mail, postage pre-paid, and telecopier on this 8th day of May 2002, to the following:

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